SAAD BIN NAYAN & 22 ORS.

v.

SYARIKAT SAMAK AQUACULTURE SDN. BHD. & ANOR.

HIGH COURT MALAYA, ALOR SETAR
TUAN K.N. SEGARA JC
[CRIMINAL APPEAL NO. 41-161-94]
30 JULY 1995

CRIMINAL PROCEDURE: *Revision - Dispute as to immovable property - Criminal Procedure Code, s. 99 - Initiation of proceedings by Magistrate - Procedures to be complied with - Non-compliance of procedures - Irregularity in proceedings - Whether proceedings null and void.*

This was an appeal by the appellants against the decision of the Magistrate Court which arose from the purported proceedings under s. 99 of the Criminal Procedure Code. The High Court was of the view that it should exercise its revisionary powers in determining the regularity of the proceedings conducted by the Court below, as there was no statutory provision for an appeal in respect of any order or decision by the learned Magistrate in the exercise of his powers under s. 99 CPC. The appeal was dismissed *at liminis.*

The Magistrate's original records consisted of two files - Criminal Applications Nos. 89-1-94 and 89-2-94. Criminal Application No. 89-1-94 contained a 'notis' dated 16 January 1994 signed by the Magistrate addressed to Syarikat Samak Aquaculture Sdn. Bhd. (the company), prepared and filed by the solicitors for the three complainants named in the notice, a 'maklumat dan aduan' and an 'aduan tambahan' affirmed by the 3 complainants and filed by the same solicitors. The 'notis', signed by the Magistrate, stated in bare terms the existence of a dispute over the lands in the claimants' possession which was likely to cause breach of peace and trespass by the company over the said lands, and ordered the company to stop any act of trespass. The company was further summoned to appear in Court to file in a written statement in respect of actual possession of the said land. Based on the three documents, the Magistrate recorded an order pursuant to s. 99(1) of the CPC.

Criminal Application No. 89-2-94 contained a 'notis' signed by the Magistrate addressed to Syarikat Samak Aquculture Sdn. Bhd. prepared and filed by the same solicitors and a 'maklumat dan aduan' affirmed by the 20 complainants. Based on the two documents the Magistrate recorded "... Mahkamah menetapkan supaya pihak-pihak memfailkan pernyataan bertulis mengenai tuntutan masing-masing dan ia akan didengar oleh Mahkamah ini pada 15 Februari 1994."

The issue before the Court was whether the Magistrate had in fact adhered to the procedural requirements before initiating the proceedings under s. 99 of the Criminal Procedure Code.

Held:

[1] Section 99 and s. 100 of the Criminal Procedure Code provide a speedy remedy in order to prevent a breach of peace by bringing the parties concerned before the Magistrate and ascertaining who was in actual possession, and thereafter, maintaining the *status quo* until their rights are determined by a competent civil Court.

[2] Before initiating proceedings the Magistrate must be first satisfied of the two conditions referred to in s. 99(1) namely, (i) a dispute concerning any land, or water or the boundaries thereof, and (ii) such a dispute is likely to cause a breach of the peace.

[3] Once satisfied that the two conditions prevail, the Magistrate shall make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such a dispute to attend his Court within a time to be fixed by him, and further directing the parties concerned in such dispute to put in written statements of their respective claims as regards the fact of actual possession of the subject of dispute.

[4] After making the preliminary order, the Magistrate shall direct on whom the preliminary order should be served. The Magistrate shall further direct and ensure that, at least, one copy of the preliminary order shall be published in a conspicuous place at or near the subject of dispute. The preliminary order should contain no directives whatsoever in the nature of an injunction to any of the parties concerned in the dispute, however well meant or intended the directive may be, to prevent a breach of the peace.

[5] Thereafter the Magistrate shall make an inquiry under s. 99(4) CPC and if he decides that one of the parties concerned in the dispute is in actual possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction. If the Magistrate decides that none of the parties concerned in the dispute is then in actual possession or the Magistrate is unable to satisfy himself as to which of them is in actual possession of the subject of dispute, the Magistrate may attach it until a competent civil Court has determined the rights of the parties or the persons entitled to possession.

[6] The Magistrate in the lower Court has seriously erred in law when he failed to issue the mandatory order in writing setting out the grounds on which he is satisfied that a dispute likely to cause a breach of the peace exists, concerning the lands in question.

[7] There is no application for the Magistrate to approve in proceedings under s. 99(1) CPC. In law, he is only obliged to consider information before him and decide whether he should initiate proceedings under s. 99(1) CPC by issuing the preliminary order. In deciding whether to exercise his discretion and powers under s. 99 CPC, he should not blindly comply with the bidding of the complainants.

[8] The Magistrate has also failed to determine who are the persons concerned in the dispute in order to direct service of the mandatory order.

[9] The exhibits attached to the 'maklumat' and 'aduan' of the 20 complainants clearly implicate Syarikat Aspirasi Gemilang as an alleged dispossessor of their lands. There was no mention of Syarikat Samak Aquaculture Sdn. Bhd. in the police reports at all.

[10] It is also apparent from the 'maklumat' and 'aduan' of the 20 complainants that all the lands had been the subject matter of acquisition proceedings and have been taken possession by the State Government, under the provision of the Land Acquisition Act 1960. None of the 20 complainants affirmed that they have been granted any form of licence to stay in possession and occupation by the State Authority, at any time after the acquisition of their lands. The State Government must necessarily be a party concerned to the dispute. The Magistrate ought to give weight and consideration to these facts when exercising his discretion to initiate proceedings under s. 99(1) CPC.

[11] The whole purported proceedings under s. 99 CPC by the learned Magistrate is unlawful and void *ab initio*, consequent upon the issue and signing of the two 'notis' at the instance of the solicitors for the complainant.

[Proceedings initiated in lower Court quashed].

Cases referred to:

Amand v. Home Secretary and Minister and Minister of Defence [1943] AC 147 ***(refd)***
Pemungut Hasil Tanah Daerah Barat Daya, Penang v. Kam Gin Paik & Ors. [1986] 1 MLJ 362 ***(refd)***
Caetano Colaco v. Joao Rodrigues AIR 1966 Goa 32 ***(refd)***
S.M. Yaqub & Others v. T.N. Basu & Another AIR (36) 1949 Patna 146 ***(refd)***
Indramoni Devi v. Raghunath Bhanja Biradar Jagdeb AIR 37 150 Orissa 59 ***(refd)***
The Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust AIR 1957 SC 344 ***(refd)***
Singapore Woodcraft Manufacturing Co. (Pte) Ltd. v. Mok Ah Sai [19791 2 MLJ 166 ***(refd)***
McPhail v. Persons, Names Unknown [1973] 3 All E R 393 ***(refd)***
Bohari bin Taib & Others v. Pengarah Tanah Galian Selangor [1991] 1 MLJ 343 ***(refd)***
Luganda v. Service Hotels Ltd. [1969] 2 Ch. 209 ***(refd)***
Gram Panchavat & Another v. Municipal Board & Others AIR 1963 Rajasthan 42 ***(refd)***
Ramachandra Deb & Others v. State of Orissa AIR 1957 Orissa 80 ***(refd)***
Gibson v. Union of Shop, Distributive and Allied Workers [1968] 2 All ER 252 ***(refd)***
Marion White Ltd. v. Francis [1972] 1 WLR 1423 ***(refd)***
T.P.C. v A.B.U. & Anor. [1983] 2 MLJ 79 ***(refd)***
Jaafar bin Abu & Anor. v. Public Prosecutor [1988] 2 MLJ 363 ***(refd)***
Hari Ram Seghal v. Public Prosecutor [1981] 1 MLJ 165 ***(refd)***
Mohd. Dalhar bin Redzwan & Anor. v. Datuk Bandar, Dewan Bandaraya Kuala Lumpur [1995] 1 MLJ 645 ***(refd)***
Nathan v. Public Prosecutor [1972] 2 MLJ 101 ***(refd)***
Gurdit Singh v. Public Prosecutor [1983] 1 MLJ 264 ***(refd)***
Manokaran & Anor. v. Public Prosecutor [1979] 1 MLJ 262 ***(refd)***
Wong Siak Fon v. Public Prosecutor [1972] 1 MLJ 203 ***(refd)***
Tang Kee Chie v. Public Prosecutor [1987] 1 MLJ 430 ***(refd)***
The Motor Emporium v. V. Arumugam [1933] FMS 21 ***(refd)***
R.H. Bhutani v. Miss Mani J. Desai & Ors. [1969] 1 SCR 81-89 ***(refd)***
Agni Kumar Das v. Mantazaddin [1929] 30 Cr.LJ 69-100 ***(refd)***
Bhola Nath v. Emperor [1929] 30 Cr.LJ 101 ***(refd)***
Hari Ram v. Banwari. Lal [1967] Cri.LJ 1051-1053 ***(refd)***
Beer Singh v. State [1973] Cri.LJ 755 (V 79 C 232) ***(refd)***
Development & Commercial Bank Bhd. v. Astrid Jorunn Saniman [1991] 1 MLJ 435
Fry v. Moore [1886-90] All E.R. Rep. ***(refd)***
Professor Dr. A. Kahar Bador & Ors. v. N. Krishnan & Ors. [1983] 1 MLJ 407-410 ***(refd)***
Rohana bte Ariffin v. Universiti Sains Malaysia [1988] 2 MLJ 609-613 ***(refd)***
Anisminic, Ltd. v. The Foreign Compensation Commission and Another [1969] 1 All ER 208 ***(refd)***
Pahang South Union Omnibus Co. Bhd. v. Minister of Labour and Manpower & Anor. [1981] 2 MLJ 199-204 ***(refd)***
Ram Saran & Ors. v. Ramdas AIR 1965 Jammus Kashmir 49 ***(refd)***
Ganga Singh v. Raj Bahadur Singh & Ors. AIR 1958 All 803 ***(refd)***
Obhoy Chandra Mookerjee v. Mohamed Sabir [1883] 1 LR 78 ***(refd)***
Damodur Biddyadhur Mohapatro & Anor. v Syamanund Dey [1881] 1 LR 386 ***(refd)***
Leela Singh & Ors. v. B.P. Singh & Ors. AIR 1946 Pat 389 ***(refd)***
Ramachandra Deb & Ors. v. State of Orissa AIR 1957 Mssa 80 ***(refd)***
Rup Chand Moran & Anor. v. Bhagalu Singh AIR 1954 Assam 77 ***(refd)***
Government of the State of Negeri Sembilan & Anor. v. Yap Chong Lan & 12 Ors. ***(refd)***
Lesco Development Corporation Sdn. Bhd. v. Yap Chong Lan & 12 Ors. ***(refd)***
Pegang Mining Co. Ltd. v. Choonq Sam & Ors. ***(refd)***
Winter Garden Theatre Ltd. v. Millenium Productions Ltd. [1948] AC 173 ***(refd)***
Sukumar v. State [1972] 1 Mys. L.J. 349 ***(refd)***
K.Ganesh v. Venkateswara Ayer [1964] 2 Cr. LJ 100 ***(refd)***
The Motor Emporium v. V. Arumugam [1933-34] FMS LR 21 ***(refd)***

Legislation referred to:
Acquisition of Land Act 1 of 1894, ss. 16 and 17
Courts of Judicature Act 1964 (Act 91), ss. 31 to 37
Criminal Procedure Code, s. 99, (1), (3), (4), (6), 100, 101, 323 to 327
Criminal Procedure Code (FMS Cap 6), ss. 323 to 327
Criminal Procedure Code (FMS Cap.6) With Annotations of Amendments 1970-1976
Criminal Procedure Code of the Straits Settlements, Part. 1, Preliminary Ordinance No. 121
Government Proceedings Act 1956, s. 29(1)(b)
Land Acquisition Act 1960, ss. 18, 19, 22, 23, 63 and 66
National Land Code
Rules of the High Court 1980, O. 15 r. 16
Specific Relief Act, 1950, ss. 7, 8(2) & 8(3)
Subordinate Courts Act 1948 (Act 92)
Subordinate Courts Rules Act 1955 (Act 55)
Undang-Undang Tubuh Kerajaan Kedah Darul Aman

Other sources referred to:
Sohoni's Code of Criminal Procedure 1973, 17th Edn., Vol. 2, 18th Edn. pp. 1117, 1118, 1119, 1128, 1129, 1202, 1203, 1205 and 1206
O.M. Aggarwala's Compulsory Acquisition of Land in India [Commentary on Acquisition of Land Act 1 of 1894, ss. 16 & 17]
Code of Criminal Procedure, 1973, B.B. Mitra, Vol. 1, 16th Edn. ss. 1 to 224, p. 21-23
The Declaratory Judgment, Zamir and Woolf, 2nd Edn., 1993, paras. 4.108 & 4.085
The Code of Criminal Procedure, 1973 (Act No. 2 of 1974) 7th Edn.
Supreme Court Criminal Digest - 1950-75, 1976 Vol. 1 A-D 3rd Edn.
The Law of Criminal Procedure, S.C. Sarkar, 5th Edition, s. 309 to end
Supreme Court Criminal Digest 1950-75, S.K. Agrawal, 1976 3rd Edn, Vol. 1 pp. 330-331

For the appellant - G.S. Nijar (Hj. Mohideen, Meenakshi Raman, Thayalan Muniandy with him) M/s. Meena Thayalan & Partners
For the first respondent - Muhamad b. Burok; M/s. Abu Talib, Shahrom & Zahari
For the second respondent - S. Selvanathan & Badlishah; DPP & FC.

JUDGMENT

K.N. Segara JC:

This appeal before me is against the decision of the learned Magistrate, Jitra, made on 15 February 1994 arising from the purported proceedings under s. 99 of the Criminal Procedure Code (hereinafter referred to as the "CPC") initiated by him on 24 January 1994 and 2 February 1994, at the instance of the appellants.

At the very outset I had intimated to Counsel for both the appellants and the respondents that this matter before me cannot be proceeded as an appeal as there is no statutory provision for an appeal in respect of any order or decision by the learned Magistrate in the exercise of his powers under s. 99 CPC. Mr. G.S. Nijar, Counsel for the appellants, has very correctly conceded that this matter should not be dealt with as an appeal. He urged the Court to exercise its powers of revision under s. 323 CPC and s. 35 of the Courts of Judicature Act, 1964.

Under s. 307 CPC, the relevant part of which reads:

> .... any person who is dissatisfied with any judgment, sentence or order pronounced by any Magistrate's Court in a criminal case or matter to which he is a party may prefer an appeal to the High ...

What is a criminal case (cause) or matter? In *Amand v. Home Secretary and Minister of Defence* [1943] AC 147 at 162 Lord Wright said:

> The principle which I deduce from the authorities cited and the other relevant authorities which I have considered, is that if the cause or matter is one which, if carried to its conclusion, might result in the conviction of the person charged and in a sentence of some punishment such as, imprisonment or fine, it is a 'criminal cause or matter'.

Clearly, the appellants herein do not have a right of appeal. Therefore, this appeal is dismissed, *at liminis*. Nevertheless, having gone through the record of appeal, I am very much concerned and anxious over the regularity or otherwise of the proceedings before the learned Magistrate, at Jitra. I shall take this opportunity to exercise my general powers of revision.

The jurisdiction conferred upon a Magistrate under ss. 99, 100 and 101 of the CPC to deal with disputes concerning immovable property is an exceptional one and the provisions of the sections should, therefore, be strictly followed when any action is taken thereunder. The Magistrate must exercise the powers strictly, within the four-corners of the relevant provisions. Therefore, when the procedures laid down have been overlooked, any action taken by the Magistrate must be held to be without jurisdiction. The Magistrate should avoid slipshod or perfunctory procedure in dealing with cases under s. 99 CPC. He should not deal with any police report, any information or any complaint merely for the sake of getting through a duty, in a superficial and mechanical manner. This, unfortunately, is what appears to have occurred in this case, as will be shortly seen.

Section 99 (together with s. 100 CPC) is to be used for deciding disputes as to **possession** and **not title** regarding immovable property between private parties. When the dispute is between the Government and a private party, s. 99 CPC is inapplicable. When the private party wants to maintain his **possession** against the Government, he should move the High Court for a declaration under O. 15 r. 16, of the Rules of the High Court, 1980. A declaratory relief is about the only remedy available to him because under s. 29(1)(b) of the Government Proceedings Act, 1956, the Court shall not make any order for the recovery of the land against the Government in any proceedings but may only make a declaration of a private party's rights to title or possession as against the Government (see also *Pemungut Hasil Tanah Daerah Barat Daya, Penang v. Kam Gin Paik & Ors.* [1986] 1 MLJ 362).

The mere fact that a dispute exists between the parties, which is obviously of a civil nature, would not warrant the Magistrate to assume jurisdiction and initiate proceedings under s. 99 CPC.

Section 99 and s. 100 of the CPC provide a speedy remedy in order to prevent a breach of the peace by bringing the **parties concerned** before the Magistrate and ascertaining (if possible) who of them was in actual possession, and, thereafter, maintain *status quo* until their rights are determined by a competent civil Court.

It is entirely in the discretion of the Magistrate whether to initiate proceedings under s. 99(1) CPC or not. He must act, only if there is sufficient information and material before him, upon which he can exercise an independent mind objectively. He should not act in a mechanical manner under any pressure, or in haste, on biased information. Nevertheless, before initiating proceedings, the Magistrate **must be first satisfied** of the 2 conditions referred to in s. 99(1) namely:

(i) **a dispute concerning** any land, or water or the boundaries thereof, **exists** and

(ii) such a dispute is likely to cause a breach of the peace.

Once the Magistrate is satisfied the 2 conditions above prevail, **the Magistrate shall make an order in writing stating the grounds** (in clear terms) **of his being so satisfied** (hereinafter referred to as the "preliminary order") and requiring the parties concerned in such dispute to attend his Court within a time to be fixed by him, and, further directing the parties concerned in such dispute to put in written statements of their respective claims as regards the fact of **actual possession** of the subject of dispute.

After making **the preliminary order** the Magistrate **shall** direct on whom the preliminary order should be served. The Magistrate should further direct and ensure that, at least, one copy of the preliminary order shall be published in a conspicuous place at or near the subject of dispute (see s. 99(3) CPC). The preliminary order should contain **no directives whatsoever in the nature of an injunction** to any of the parties concerned in the dispute, however well meant or intended the directive may be, to prevent a breach of the peace. The preliminary order contemplated under s. 99(1) CPC makes no provision for such directives. Any actual breach of the peace can be easily dealt with by the police and the perpetrators prosecuted for offences under the Penal Code or any other appropriate law of the land.

Thereafter, the Magistrate shall make an inquiry under s. 99(4) CPC and if he decides that one of the parties concerned in the dispute is in actual possession of the said subject, he shall issue an order (as per the Form XXII in the 2nd Schedule of the CPC) declaring such party to be entitled to retain possession until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction (see s. 99(6)) (hereinafter referred to as the "final order"). If the Magistrate decides that none of the parties concerned in the dispute is then in actual possession (that is at the date of the preliminary order) or the Magistrate is unable to satisfy himself as to which of them is in actual possession of the subject of dispute, the Magistrate may attach it until a competent civil Court has determined the rights of the parties or the persons entitled to possession (see s. 100 CPC and Form XXIII in the 2nd Schedule of the CPC).

I have called for the original records from the learned Magistrate, Jitra. There were 2 files known as criminal application 89-1-94 and criminal application 89-2-94.

Criminal Application 89-1-94 contained the following documents:

a) **Notis**, dated 16 January 1994 signed by the Magistrate addressed to Syarikat Samak Aquaculture Sdn. Bhd. It was prepared and filed by M/s. Meena Thayalan & Partners, solicitors of the 3 complainants named in the **notis**.

b) **Maklumat dan aduan**, affirmed by the 3 complainants on 16 January 1994 also filed by M/s. Meena Thayalan & Partners.

c) **Aduan tambahan** (affirmed but undated) by the 3 complainants (also filed by M/s. Meena Thayalan & Partners, solicitors for the 3 complainants).

In order to appreciate the serious error the Magistrate has fallen into when purportedly initiating proceedings under s. 99(1) CPC, I reproduce the said 'notis' dated 16 January 1994 referred to above:

Notis

Kepada: Syarikat Samak Aquaculture Sdn. Bhd.
Suite 29.02
29th Floor
Menara Promet
Jalan Sultan Ismail
50250 Kuala Lumpur

ADALAH ianya nampak kepada Majistret yang telah meletakkan tandatangannya bahawa di atas alasan-alasan yang dinyatakan di dalam aduan-aduan Saat bin Nanyan, Chah bt Daud dan Siti Zainab bt Man bertarikh 16 Januari 1994 bahawa suatu pertikaian yang berkemungkinan mengakibatkan berlakunya pecah keamanan bersabit dengan tanah-tanah yang dalam possessi pengadu-pengadu dan keluarga-keluarga mereka dengan deskripsi seperti berikut iaitu Lot 2153 yang dipegang di bawah hakmilik SPK 14075 dan Lot 001799 yang dipegang di bawah Nombor hakmilik SPK 008585 di Kerpan, Mukim Jerlun, Daerah Kubang Pasu, Kedah dan pencerobohan ke atas tanah-tanah tersebut oleh anda, pengkhidmat dan/atau ejen anda dan ancaman pencerobohan yang akan berlaku tidak lama lagi dan berterusan ke atas tanah-tanah tersebut.

Dan ADALAH nampaknya bahawa anda, pengkhidmat dan/atau ejen anda dengan tidak sah telah menceroboh ke atas tanah-tanah yang dalam possessi pengadu-pengadu dan tanaman-tanaman di tanah-tanah tersebut.

Adalah dengan ini anda, pengkhidmat dan/atau ejen anda diarahkan untuk memberhentikan mulai dari sekarang pencerobohan tersebut sehingga anda mendapat kebenaran yang sah daripada Mahkamah undang-undang.

Anda adalah dengan ini disaman untuk hadir secara sendiri ataupun melalui peguamcara anda di hadapan Mahkamah yang tersebut di atas pada pukul 9.00 pagi pada **15 Februari 1994**, untuk memasukkan secara pernyataan bertulis tuntutan masing-masing bersabit dengan possessi sebenar tanah-tanah tersebut.

AMBIL PERHATIAN bahawa kegagalan memasukkan kehadiran akan mengakibatkan suatu Perintah dimasukkan terhadap anda. Bertarikh pada 16 haribulan Januari 1994.

t.t.

Majistret

NOTIS ini difailkan oleh Tetuan Meena, Thayalan & Partners, Peguambela dan Peguamcara yang beralamat di No. 87 Jalan Cantonment, (Pintu Masuk Persiaran Gurney), 10250 Pulau Pinang, Peguamcara bagi pihak pengadu-pengadu yang dinamakan di atas.

Based on the Notis and the 2 other documents before him the Magistrate recorded on **24 January 1994** as follows:

En. Thayalan hadir bagi pihak pemohon-pemohon. Pemohon-pemohon memohon perintah di bawah s. 99(1) Kanun Acara Jenayah.

Mah: Setelah meneliti notis permohonan dan pemohon-pemohon bertarikh 16 Januari 1994 serta affidavit tambahan yang difailkan pada 24 Januari 1994, Mahkamah berpuashati bahawa perintah ini perlu diberikan semata-mata untuk menghindarkan berlakunya pecah keamanan bersabit dengan pertikaian terhadap tanah-tanah di dalam possessi pemohon-pemohon. Perintah ini berkuatkuasa untuk sementara sehingga pertikaian mengenai 'actual possession' tanah-tanah yang dipegang di bawah hakmilik No. SPK 14075, iaitu Lot 2153 di Kerpan Mukim Jerlun, Kubang Pasu dan Lot. 001799 - di bawah Nombor hakmilik SPK 008585 - diputuskan. Pertikaian mengenai 'actual possession' akan didengar pada 15 Februari 1994.

Mah: Hanya kedua-dua lot tersebut sahaja yang terlibat di dalam permohonan ini.

t.t.

Majistret

(24 Januari 1994)

The **decision** of the Magistrate on **24 January 1994** hinged entirely on the 3 documents placed before him by the solicitors for the 3 complainants and without doubt his decision was almost entirely in the terms of the contents of the Notis dated 16 January 1994. On what authority and provisions of the law the solicitors filed the said Notis for consideration by the Magistrate, together with the information and complaint, is beyond my comprehension. All I can say is that it was highly improper, irregular, prejudicial and unlawful for the solicitors to have placed before the Magistrate the said Notis even before the Magistrate had applied his mind judicially to act one way or the other on the information available to him regarding the (alleged) dispute concerning the said lands, which was likely to cause a breach of the peace. The Notis ensnared the Magistrate into acting in the most perfunctory manner imaginable - he has acted rather mechanically (for all intents and purposes) without first appreciating what he was required to do in initiating proceedings under s. 99(1) CPC.

The Maklumat dan Aduan sans the Notis was all that was necessary to move the Magistrate to consider his cause of action. The Magistrate has *seriously erred in law when he failed to issue the mandatory order in writing setting out the grounds on which he is satisfied that a dispute likely to cause a breach of the peace exists, concerning the lands in question. Neither has the Magistrate applied his mind to determine who are the parties concerned in the dispute.* A careful perusal of the Maklumat dan Aduan and the attached exhibits, clearly indicates that one Syarikat Aspirasi Gemilang was also implicated. A further careful perusal also reveals that the lands in question are the subject matter of acquisition under the Land Acquisition Act, 1960, and that possession of the said lands had been taken by the State Government in October, 1993, under the provisions of the said Land Acquisition Act, 1960. The 3 complainants did not assert that they had been given a temporary occupation licence or permitted to remain in occupation or possession by the State Authority after the acquisition. In the circumstances, the Magistrate should have immediately realized that the State Government was also a party concerned in the dispute (if any).

Criminal Application No. 89-2-94 contained the following documents:

a) Notis, dated 30 January 1994 signed by the Magistrate addressed to Syarikat Samak Aquaculture Sdn. Bhd. It was prepared and filed by M/s. Meena Thayalan & Partners, for the 20 complainants named in the Notis.

b) Maklumat dan Aduan, affirmed by the 20 complainants on 30 January 1994 also filed by M/s. Meena, Thayalan & Partners.

Based on the above 2 documents the learned Magistrate, Jitra recorded as follows on 2 February 1994:

Ummu Kholsone hadir bagi pihak pemohon-pemohon. Permohonan pemohon-pemohon dibenarkan setelah Mahkamah meneliti affidavit yang difailkan oleh pihak pemohon-pemohon dan mendengar peguam pihak pemohon.

Mahkamah menetapkan supaya pihak-pihak memfailkan pernyataan bertulis mengenai tuntutan masing-masing dan ia akan didengar oleh Mahkamah ini pada 15 Februari 1994.

t.t.

Majistret

(2 Februari 1994)

Again, it is patent the Magistrate had lapsed into a serious error. In law, there is **no application** for him **to approve** in proceedings under s. 99(1) CPC. In law, he is only obliged to consider **information** before him and decide whether **he** should initiate proceedings under s. 99(1) CPC **by issuing the preliminary** order. The Magistrate should have full control of the matter in hand from the very outset. In deciding whether to exercise his discretion and powers under s. 99 CPC, he should not blindly comply with the bidding of the complainants.

On **2 February 1994**, the Magistrate also failed to issue **the mandatory order in writing setting out the grounds on which he is satisfied** that a dispute likely to cause a breach of the peace exists **over the lands of the 20 complainants**. **He has failed to determine who are the persons concerned in the dispute** in order to direct service of the mandatory order. The exhibits attached to the Maklumat dan Aduan of the 20 complainants (namely the police reports) clearly implicate Syarikat Aspirasi as an alleged dispossessor of their lands. In fact, there is no mention of Syarikat Samak Aquaculture Sdn. Bhd. in the police reports at all. It is also apparent from the Maklumat dan Aduan of the 20 complainants that all the lands had been the subject matter of acquisition proceedings and have been taken possession by the State Government, under the provision of the Land Acquisition Act, 1960. None of the 20 complainants affirmed that they have been granted any form of licence to stay in possession and occupation by the State Authority, at any time after the acquisition of their lands. So again, the State Government must necessarily be a **party concerned** to the dispute (if any) over the lands of the 20 complainants. The Magistrate ought to give weight and consideration to these facts staring in his eyes when exercising his discretion to initiate proceedings under s. 99(1) CPC.

The whole purported proceedings under s. 99 CPC by the learned Magistrate, Jitra, is unlawful and void *ab initio*, consequent upon the issue and signing of the two Notis dated 16 January 1994 and 30 January 1994, **at the instance of the solicitors** for **the complainants**. Magistrates should not sign and seal documents prepared by any party (where no standard forms are provided) without first considering the law and the serious implications and consequences. It is most desirable that the preliminary order under s. 99(1) be drafted personally by the Magistrate concerned, in the event he exercises his discretion to initiate proceedings, in any fit and proper case.

Flowing from the above events, the order made by the Magistrate on 15 February 1994, purporting to set aside the (non-existent preliminary) order issued on 24 January 1994 and 2 February 1994, is null and void. The question of the Magistrate making a final order under s. 99(6) CPC does not arise.

In the exercise of my powers of revision, I quash the purported s. 99 proceedings initiated by the learned Magistrate, Jitra, on 24 January 1994 and 2 February 1994, by reason that it is totally irregular, null and void for mandatory requirements of non-compliance with the s. 99(1) and (3) of the CPC.

Order accordingly.